Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1997

MAUREEN SCHOUMAN,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION and BASIC ENERGY AND AFFILIATES RESOURCES, INC., ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the District Court violated Maureen Schouman's due process rights by extinguishing her interest in a note secured by a Massachusetts property, and by ordering the Massachusetts property to be sold, when she was not a party to the proceeding, when she did not have the opportunity to take any discovery, and when she was not given an evidentiary hearing regarding the matter?

2. Whether the District Court violated Maureen Schouman's due process rights by refusing to reform its Order extinguishing Maureen Schouman's interest in the note secured by the Massachusetts property, and by ordering the Massachusetts property to be sold, when the Court's Order went well beyond the matters addressed in the hearing held on the matter?

PARTIES INVOLVED IN THIS PROCEEDING

The Securities and Exchange Commission (SEC) filed the instant cause of action against Basic Energy and Affiliated Resources, Inc., and other entities and individuals in the United States District Court for the Eastern District of Michigan, Southern Division. B.J. Adams Drilling Company was an Intervenor in the matter. Various Orders entered in the matter affected the property rights of Maureen Schouman, a non-party. Ms. Schouman appealed Orders entered by the U.S. District Court to the Sixth Circuit Court of Appeals.

In the Sixth Circuit Court of Appeals, Ms. Schouman was styled the "Movant-Appellant." The SEC was styled the "Plaintiff-Appellee." While B.J. Adams Drilling Company was also styled "Intervenor-Appellee" in the Sixth Circuit Court of Appeals, no separate appearance was filed on behalf of B.J. Adams, and no attorney entered a separate appearance on behalf of B.J. Adams. The Conservator for Basic Energy and Affiliated Resources, Inc. and its affiliate entities filed an Appearance and a Brief, and thus participated in the Sixth Circuit Court of Appeals.

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PETITION FOR WRIT OF CERTIORARI

MAUREEN SCHOUMAN respectfully requests that a Writ of Certiorari issue to review the opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on November 4, 1997, in order to resolve the conflict between the Sixth and Ninth Circuit Courts of Appeals on the important issue presented herein.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit that gives rise to this Petition is unpublished by Order of the Sixth Circuit. It is reprinted in Appendix A hereto (App. A) at page 1.

JURISDICTION

On November 2, 1994 the SEC filed the instant cause of action in the United States District Court, Eastern District of Michigan, Southern Division. On January 16, 1996 the Court entered an "Order Authorizing Lewis J. Mosburg, Jr. to Establish a Nominee Trust" which affected the property at issue. On March 28, 1996, the Court entered an Order denying a request to set aside the January 16, 1996 Order and establishing various ownership interests in the property at issue. An objection was made to the March 28, 1996 Order, by way of a Motion to Reform Order Nunc Pro Tunc. On April 22, 1996 the

District Court entered its Order denying the request that the Court reform its March 28, 1996 Order.

The District Court's April 22, 1996 Order was appealed to the Sixth Circuit Court of Appeals on May 9, 1996 within the 30 day appeal period set forth in Federal Rules of Appellate Procedure, Rule 4.

On November 4, 1997 the Sixth Circuit Court of Appeals entered its Opinion affirming the District Court's Orders.

The jurisdiction of this Court to review the Judgment of the Sixth Circuit Court of Appeals is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Constitution of the United States of America, Amendment V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

This proceeding stems from an action which was brought by the Securities and Exchange Commission (SEC) against Basic Energy and Affiliated Resources, Inc., Mid-America Resources Corporation (collectively referred to as "BEAR Energy,") and the principals involved in those entities. One such principal is Michael Schouman, who is a named Defendant in the action. The SEC filed suit pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78a(a).

A Settlement Agreement eventually was reached between the SEC and Michael Schouman (App. at 29). Pursuant thereto, Orders of Liability and Disgorgement were entered requiring Michael Schouman to transfer personal assets to the Court appointed Trustee. One such Order, entered on January 16, 1996, required Michael Schouman to quit claim a 50% interest in property located in East Orleans, Massachusetts to the Trustee (App. at 23 and 26).

Maureen Schouman, a non-party, was the title holder of the remaining 50% interest in the Massachusetts property. When she was informed of the January 16, 1996 Order, she filed an Objection to the Order in the District Court (App. 17). In her objection, Maureen Schouman attempted to inform the Court that she was not a party to the action, but that her interest in the property was being adversely affected as a result of the Court's Order, and that in effect her due process rights were being violated. She attempted to demonstrate by way of historical chronology, why Michael Schouman's interest in the property

was less than 50%, and why the Court should revisit its January 16, 1996 Order and take new testimony and view new evidence.

The property was originally acquired by the Schouman family in approximately 1978, and it was intended to serve as a family vacation spot. The family owned 100% of the property. Michael Schouman, along with his parents and siblings, owned a minority interest in the property. His interest did not approach 50%, but rather was approximately 12%.

Several years later Michael Schouman was instrumental in forming BEAR Energy. These entities were engaged in the business of mineral exploration and exploitation. In 1988-89, economic necessity, prompted by market stresses in the oil and gas industry, made it necessary for BEAR Energy to borrow $200,000. In order to facilitate the borrowing of the money, Michael Schouman sought the cooperation of his family. He requested and obtained their consent to pledge the Massachusetts property as collateral for a $200,000 loan. The lending bank required that Michael Schouman be at least a 50% owner of the property. This was accomplished by transferring the property into the names of Michael Schouman and his sister Maureen Schouman.

The $200,000.00 loan was closed and the monies were transferred directly from the lending bank into the BEAR Energy bank account. Subsequently, Michael Schouman executed a Promissory Note on his own behalf and as President of BEAR Energy for the $200,000.00, and secured this note with his interest in the Massachusetts property. Additionally, he executed another note in the

amount of $200,000 to Maureen Schouman to assure her that, should BEAR Energy default on the $200,000 note to the bank, the Schouman family could maintain their interest in the Massachusetts property by foreclosing on Michael's interest and then paying off the remainder due on his note.

BEAR Energy made all payments on the note to the lending bank until October 1994, when all of its assets were seized by the SEC, Plaintiff in this action. Subsequently, all loan payments due on the $200,000 note were, of necessity, made by Ms. Schouman. She also continued making payment on the original mortgage on the property. At the time, in excess of $180,000 remained due on the $200,000.00 note. This amount clearly exceeded the value that Michael Schouman held as a result of his ownership interest in the property at the time that the $200,000.00 was borrowed by BEAR Energy.

It has been and remains Ms. Schouman's position that the interest held by Michael Schouman was only a beneficial interest, allowing Michael Schouman to borrow the $200,000.00 on behalf of his company, BEAR Energy. Once BEAR Energy ceased making payments, it was in default of the promissory note to Ms. Schouman, which note was secured by Michael Schouman's interest in the Massachusetts property. Maureen Schouman tried to put this information before the District Court in hopes of obtaining the relief from the Court's Orders (App. 17). The attorneys for the SEC filed a response to Maureen Schouman's objections to the Court's January 16, 1996 Order, and argued that the facts were different than as represented in her objections.

The objections were sent for oral argument. The Court heard oral argument, but rather than ordering any of the relief requested, or granting an evidentiary hearing regarding the matter, the Court summarily and simply denied her motion (App. 40-53, Transcript of Hearing). The Order entered by the Court sometime thereafter went significantly beyond the Court's denial of Ms. Schouman's objections. The March 28, 1996 Order signed by the Court was not presented to Ms. Schouman's counsel for approval, and it mandated actions to be taken by her, as a non-party, which drastically impacted on her ownership interest in the property, including directions to market the property for sale. The Order also made findings of fact relative to the Promissory Note and Security Agreements, despite the fact that no evidentiary hearings were ever conducted, and despite the fact that Maureen Schouman was never added as a party (App. 12).

Ms. Schouman brought a Motion to Reform the March 28, 1996 Order Nunc Pro Tunc (App. 8). On April 22, 1996 the Court entered its Order Denying the Motion to Reform the Order (App. 6). The April 22, 1996 Order was appealed to the Sixth Circuit Court of Appeals.

On November 4, 1997, the Sixth Circuit Court of Appeals issued its opinion affirming the District Court's Orders (App. 1).

REASONS FOR GRANTING THE WRIT

I. THE SIXTH CIRCUIT'S OPINION DIRECTLY CONFLICTS WITH THE NINTH CIRCUIT'S OPINION IN *WENCKE*, AND SANCTIONS THE DENIAL OF DUE PROCESS RIGHTS.

The Fifth Amendment of the Constitution embodies the due process clause. It states, in pertinent part, "No person shall be . . . deprived of . . . property without due process of law . . . " Due process includes the right to a hearing before property is taken.

The right to be heard before suffering a grievous loss is a basic principal of our society. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1975) (citations omitted). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). See *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)." *Mathews, supra*, 424 U.S. 319 at 333.

SEC v. Wencke, 783 F.2d 829 (9th Cir. 1986), *cert. den.*, 479 U.S. 818 (1986), addressed a proceeding similar to the instant case, wherein the SEC brought a securities fraud action against the Defendant and other individuals and trust and corporate defendants controlled by the Defendant and his associates. The District Court eventually entered a Final Judgment permanently enjoining Defendant and the other Defendants from further securities activity, and ordering the Defendant to disgorge all assets or monies that he had received directly or indirectly. *Id.* at 831-832.

The Court also appointed a receiver to take possession and control of the various assets, and to manage and

conserve the assets for the benefit of the investors, and to determine the extent of the estate. *Id.* The Court later entered an Order directing the receiver to trace the various assets which Defendant and his associates had taken from the various entities, as well as ill-gotten gains, and to initiate disgorgement proceedings to recover the assets and ill-gotten gains. *Id.*

The receiver later filed an Application for Disgorgement directed to various individuals and entities, and a Complaint which constituted a separate and independent action against several individuals and entities requesting the imposition of a constructive trust regarding various of the assets at issue. An individual named de Lusignan was one of the objects of both the Application for Disgorgement and the new cause of action. de Lusignan was deposed on two occasions after the filing of the Application for Disgorgement and the new cause of action. He was later served with another copy of the Disgorgement Application, various supporting documents, and a Notice of Hearing to be held before the Magistrate/Special Master.

de Lusignan filed an Objection to the scheduled hearing claiming that the District Court did not have personal jurisdiction, and claiming that permitting the receiver to proceed against him in the Disgorgement Application violated his due process rights. *Id.* at 832.

The Magistrate/Special Master conducted an evidentiary hearing on the Disgorgement Application, during which de Lusignan's counsel entered only a "Special Appearance" and de Lusignan did not present any evidence or question any witnesses. The Magistrate/Special

Master made various findings that the assets at issue were "ill-gotten gains and subject to disgorgement." *Id.* at 833. The Magistrate adopted various findings and recommendations as drafted by the receiver and filed them with the District Court.

The receiver moved the District Court to adopt the Magistrate/Special Master's findings, conclusions and recommendations. de Lusignan filed objections claiming that the Court lacked jurisdiction over him, and that the disgorgement proceedings violated the Federal Rules of Civil Procedure and due process. *Id.* The District Court held a hearing on the receiver's Motion to Adopt the Magistrate/Special Master's Recommendations and on de Lusignan's Objections to the Recommendations. The Court decided to reject de Lusignan's claims, and adopted the Magistrate/Special Master's findings, conclusions and recommendations. *Id.* at 834.

In the Ninth Circuit, de Lusignan raised his allegation that the disgorgement proceedings violated his due process rights. The Court disagreed. *Id.* at 836. The Court stated that de Lusignan had notice of the disgorgement proceedings directed against him, and that nothing prevented him from filing responsive pleadings to the disgorgement application or to seeking discovery at any time between the institution of the two proceedings and the issuance of the Court's Disgorgement Order some two years later.

Thus in light of the fact that de Lusignan had notice of the nature of the proceedings, was permitted the opportunity to take extensive discovery, and was permitted to file briefs and exhibits, and in light of the fact that

a Magistrate/Special Master conducted a full evidentiary hearing including the questioning of witnesses, de Lusignan's due process rights were not violated. *Id.* at 838.

In *SEC v. Elliott*, 953 F.2d 1560 (11th Cir. 1992), the Eleventh Circuit adopted the reasoning set forth in *Wencke, supra*, and reiterated the tenet that summary proceedings are inappropriate if the parties are deprived of a full and fair opportunity to present their claims and defenses. *Id.* at 1567.

In the instant case, Ms. Schouman disputed the trustee's allegations regarding ownership of the property at issue, but unlike the *Wencke* complainant, she was not allowed to take any discovery thereon, and she was not afforded a hearing in which to present documents and testimony, and which would allow her to present other witnesses to support her position.

Despite Ms. Schouman's objections to the trustee's allegations, and despite her objections to the District Court's Orders regarding the matter, the District Court never entered an Order allowing Ms. Schouman to intervene in the matter properly to present her claims.

The Sixth Circuit affirmed the District Court's rulings, stating that while the District Court did not enter an Order allowing Ms. Schouman to intervene, the District Court nevertheless dealt with Ms. Schouman as though she were an intervenor, and therefore she *was* an intervenor. Having decided that Ms. Schouman was an intervenor, the Sixth Circuit then held that the District Court did not violate her due process rights despite the District Court's failure to allow her to take discovery and present evidence at an evidentiary hearing (App. 1).

Wencke, supra, presents the better reasoned approach to the protection of due process rights in the circumstances at issue. When an SEC disgorgement proceeding places a non-party's substantial property interest in jeopardy, the non-party must be allowed to prepare for and attend an evidentiary hearing regarding the matter. The Sixth Circuit, however, put its blessing on a perfunctory proceeding which stripped Ms. Schouman of her property rights. The conflict between the Sixth Circuit and Ninth Circuit Courts of Appeals is obvious and irreconcilable. Certiorari therefore is appropriate.

The Court should also note that the asset which the District Court ordered disgorged, the interest in the Massachusetts property, was not a fruit of anyone's misdeeds, or an ill-gotten gain, because Michael Schouman's interest in the property predated the SEC proceedings by about 16 years. This long-standing interest was pledged by him to facilitate the $200,000.00 loan. The loan funds went into BEAR Energy, not to Ms. Schouman. Thus the "gain" subject to disgorgement, if any exists in this context, is in the possession of BEAR Energy. These circumstances only underscore the initial overreaching by the SEC and the glaring due process deprivation visited upon Ms. Schouman as a result of the imprimatur of the District Court.

II. THE DISTRICT COURT'S MARCH 28, 1996 ORDER DID NOT CONFORM WITH THE COURT'S RULINGS MADE AT THE HEARING, AND AS SUCH VIOLATES PLAINTIFF'S DUE PROCESS RIGHTS.

The only time the District Court entertained Ms. Schouman's position was during the March 7, 1996 hearing on her Objections to the Court's January 16, 1996 Order (App. 40-53). After Ms. Schouman's counsel clearly set forth Ms. Schouman's allegations that her due process rights were being denied by the proceedings, the Court stated that it declined to modify its January 16, 1996 Order (App. 53). The Court issued no directives to Ms. Schouman to do anything, and the Court made no findings of fact relative to the validity or invalidity of the allegations raised by her regarding her interest in the property at issue.

Notwithstanding the foregoing, on March 28, 1996, a full three weeks after the hearing, the Court issued an Order which considerably went beyond the Court's ruling from the bench (App. 12). While the Order properly stated that it denied Ms. Schouman's requested relief, it also sets forth findings of fact never made by the Court at the time of hearing, and it ordered Ms. Schouman to perform acts which would result in the disposition of the Massachusetts property.

The Order itself thus presents a myriad of problems because it contains findings of fact not made by the Court at the time of the hearing, and which findings are insupportable, because the only documents presented to the Court were those provided by the SEC and the trustee,

and no testimony was taken of any witnesses (App. 40-53). The District Court thus did not allow Ms. Schouman to intervene and prepare her case, but nevertheless issued its Order mandating that she dispose of the Massachusetts property.

Ms. Schouman's counsel petitioned the Court for reformation of the March 28, 1996 Order (App. 8), but was summarily rebuffed by the Court (App. 6-7).

While Ms. Schouman was refused entry into the action as an intervenor, and thus was never allowed to gather or present evidence at an evidentiary hearing, the Sixth Circuit held that she was in fact an intervenor. The Sixth Circuit also held that the District Court's cursory consideration of her arguments, and the Court's stripping her of her property interests and leaving her with a debt of $200,000.00 is the sum of due process to which she is entitled.

The Sixth Circuit's Opinion in light of *Wencke, supra,* highlights the need for a uniform rule regarding the nature of due process hearings involving non-party property interests brought into issue by disgorgement proceedings.

CONCLUSION

For all of the foregoing reasons, the Court should grant this Petition for a Writ of Certiorari.

Respectfully submitted,

MUSILLI, BAUMGARDNER,
WAGNER & PARNELL, P.C.

ROBERT N. WAGNER, P29335

APPENDIX

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2. April 22, 1996 Order.....App. 6

3. April 15, 1996 Motion to Reform Order Nunc Pro Tunc.....App. 8

4. April 2, 1996 Order Denying Petitioners Maureen Schouman, Donna Schouman and the Schouman Family's Request to Set Aside this Court's Order of January 16, 1996 and Establishing Ownership Interests in Cape Cod Property.....App. 12

5. January 26, 1996 Objection to Court's Order of January 16, 1996.....App. 17

6. January 16, 1996 Order Authorizing Lewis G. Mosburg, Jr. to Establish a Nominee Trust...App. 23

7. November 9, 1995 Order Requiring Defendants Schouman and Delaney to Turn Over Assets or be Incarcerated Until Compliance with this Order.....App. 26

8. November 9, 1994 Order of Preliminary Injunction Against Basic Energy & Affiliated Resources, Inc., Mid-America Resources Corp., Michael Schouman, Sara Delaney, Robert Vecchioni, Gus Zoppi, Jr. and Scott Sowles.....App. 29

9. March 7, 1996 Transcript of Motion before the Hon. Horace W. Gilmore, United States District Judge.....App. 35

10. May 9, 1996 Notice of Appeal.....App. 54

11. Constitution of the United States of America, Amendment V.....App. 55

NOT RECOMMENDED FOR PUBLICATION

No. 96-1658

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff-Appellee;** B.J. ADAMS DRILLING COMPANY, **Intervenor-Appellee,** v. BASIC ENERGY AND AFFILIATED RESOURCES, INCORPORATED, et al., **Defendants;** MAUREEN SCHOUMAN, **Movant-Appellant.**	**ON APPEAL** FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN.

OPINION

(**FILED** Nov. 4, 1997)

BEFORE: MERRITT, WELLFORD, and MOORE, Circuit Judges.

KAREN NELSON MOORE, Circuit Judge. In an order dated January 16, 1996, Michael Schouman was ordered to quitclaim his 50% interest in a Massachusetts property (the "Property") to a conservator appointed by the district court in satisfaction of a judgment obtained by the Securities and Exchange Commission ("SEC") against him in a civil enforcement action. Title records indicated

that the Property was owned by Michael and his sister, movant-appellant Maureen Schouman, as tenants in common, each owning 50% of the Property. Appellant, who claims not only to own the remaining 50% interest in the Property but also to hold a security interest in Michael's 50% interest, filed an objection to this order. After holding a motion hearing to consider the objections, at which hearing appellant's counsel argued, the district court in an order dated March 28, 1996 (the "March 28, 1996 Order") denied appellant's request to set aside his previous order and directed the Property to be sold with the cooperation of appellant and the court-appointed conservator, now co-owners of the Property.[1] This appeal was filed when appellant's subsequent Motion to Reform Nunc Pro Tunc the March 28, 1996 Order was similarly denied.

I

Appellant has advanced several arguments for why the March 28, 1996 Order should be reversed. First, appellant claims this order deprives her of her property without due process of law as guaranteed by the Fifth Amendment because it directs the Property to be sold (1) without formally making her a party to the action with the SEC and (2) without holding an evidentiary hearing and allowing appellant to present evidence of her alleged interests in the Property.

---

[1] Pursuant to this order, "[e]ach co-owner [has] the right to match the highest bidder for the Property. . . . " J.A. at 272 (March 28, 1996 Order at 2).

Although the district court did not formally make appellant a party to the action involving the SEC, appellant's attorney made it clear at the motion hearing that his motion was really "more . . . like a motion to intervene than anything else." J.A. at 292 (JDistrict Ct. Tr. of Mot. at 7). The district court then proceeded to hear arguments from appellant's counsel regarding appellant's reasons for requesting that the January 16, 1996 Order be set aside. J.A. at 292-305 (District Ct. Tr. of Mot. at 7-20). Where "the court below apparently treat[s intervening parties] as parties," this court will assume an implied grant of leave to intervene even if "no formal order granting [a] motion to intervene was ever entered." *Smartt v. Coca-Cola Bottling Corp.*, 337 F.2d 950, 951 (6th Cir. 1964). In light of our previous holding in *Smartt*, we must conclude that appellant's argument has no merit.

As for the second part of appellant's due process claim, we conclude that appellant was given an opportunity to be heard at a meaningful time and in a meaningful manner as required under *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Appellant had the opportunity to, and did in fact, have counsel present her arguments to the district court both in writing and orally at the motion hearing as well as submit any evidence she had of her interests in the Property. It was never suggested at the motion hearing that any additional evidence existed. In her later Motion to Reform Nunc Pro Tunc the March 28, 1996 Order, appellant provided no additional evidence. Similarly, on appeal, appellant makes no claim that she has any additional evidence not already presented to the district court.

II

Appellant also asserts several procedural defects with the March 28, 1996 Order. First, appellant claims that the March 28, 1996 Order goes "consideralbly beyond the Court's ruling from the bench" at the motion hearing since it (1) "contains findings of fact not made by the Court at the time of the hearing" and which are "unsustainable as no evidence had ever been presented nor testimony taken" and (2) "mandates action" on the part of the appellant. Appellant's Br. at 13-14. This court sees no reason why a district judge's written decision cannot go beyond his ruling from the bench, particularly when the two are consistent with each other. Judges often make a preliminary ruling from the bench with a more complete written order to follow. Furthermore, the findings of fact contained in the written March 28, 1996 Order were sustainable given the evidence and arguments presented to the district judge at the motion hearing. Most importantly, appellant cannot point to any additional evidence she would like to have presented to the district judge to support her contention that the Property should not be sold so that Michael's 50% interest could be used to satisfy the outstanding judgment. Finally, with respect to the mandates applicable to appellant contained in the March 28, 1996 Order, these mandates related directly to the court's decision to deny her motion and merely direct that the court's decision be carried out. Appellant should not be surprised that intervention renders her "vulnerable to complete adjudication by the federal court of the issues in litigation between the intervenor and the adverse party." *Schneider v. Dumbarton Developers, Inc.*, 767 F.2d 1007, 1017 (D.C. Cir. 1985) (citation omitted).

Appellant's last claim concerns the district court's alleged failure to enter its March 28, 1996 Order in accordance with Local Rule 58.1. We do not believe the local rule is of any significant contrary effect.

III

At oral arguments before this panel, appellant raised for the first time the theory that only the fruits of one's wrongdoing can be used to satisfy a disgorgement obligation. This argument was never raised before the district court nor was it raised in appellant's brief on appeal. Moreover, even assuming this claim has not been waived, it clearly has no merit.

IV

For the foregoing reasons, this court **AFFIRMS** the lower court's interlocutory order denying modification of its previous injunction.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BASIC ENERGY & AFFILIATED RESOURCES, INC., MID AMERICA RESOURCES CORP., MICHAEL SCHOUMAN, SARAH DELANEY, ROBERT VECCHIONI, CHARLES MICHAEL, JR., GUS ZOPPI, JR., and SCOTT SOWLES,

Defendants.
_____/

HONORABLE HORACE W. GILMORE
Case No. 94-74434

ORDER

At a session of said court held
in the Theodore Levin U.S. Courthouse,
Detroit, Michigan,

on APR 22 1996 .

PRESENT: Honorable Horace W. Gilmore United States District Judge

Petitioner Maureen Schouman, having petitioned to reform this Court's March 28, 1996 Order, nunc pro tunc, and the Court having considered said Motion; **IT IS ORDERED** that Petitioner's Motion to Reform Order be and hereby is **DENIED.**

This Court's March 28, 1996 Order is based on the pleadings presented by the parties and by the oral argument at the hearing on March 7, 1996. The Order comports with Local Rule 58.1(c)(1).

/s/ Horace W. Gilmore
Horace W. Gilmore
United States
District Court

Dated: APR 22 1996

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-vs-

BASIC ENERGY & AFFILIATED RESOURCES, INC., MID AMERICA RESOURCES CORP., MICHAEL SCHOUMAN, SARAH DELANEY, ROBERT VECCHIONI, CHARLES E. MICHAEL, JR., GUS ZOPPI, JR. and SCOTT SOWLES,

Defendants.

Civil Action Case No.: 94 CV 74434

Hon. Horace W. Gilmore

(Filed Apr. 15, 1996)

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MOTION TO REFORM ORDER NUNC PRO TUNC

NOW COMES the Petitioner herein, MAUREEN SCHOUMAN, by and through her attorneys, MUSILLI, BAUMGARDNER, WAGNER & PARNELL, P.C., and in petitioning this Honorable Court to reform an Order entered by this Court on March 28, 1996, Nunc Pro Tunc, shows unto this Honorable Court as follows:

1. That on or about January 25, 1996, Petitioner MAUREEN SCHOUMAN did cause to be filed with this Court an Objection to the Court's Order of January, 16, 1996, on the basis that said Order appeared to impact on property in which Petitioner MAUREEN SCHOUMAN had an interest.

2. That the Order was entered without notice to MAUREEN SCHOUMAN, in that she is not, and was not a party to this action.

3. That on or about March 7, 1996, this Court did conduct a hearing in which consideration was given to MAUREEN SCHOUMAN'S position, and as a result thereof, this Court did issue from the bench its ruling that her Petition for Relief was denied.

4. That no further determination was made by the Court, nor was any further directives given.

5. That subsequent to the aforementioned hearing, wherein the Court denied the Petition of MAUREEN SCHOUMAN to set aside the Order of January 16, 1996, Petitioner MAUREEN SCHOUMAN through her attorneys did receive on April 4, 1996, a true copy of an Order not only denying MAUREEN SCHOUMAN'S Petition, but adding to pages of mandated action to be taken by MAUREEN SCHOUMAN, which was not ordered by this Court, and which was not reflective of this Court's Order.

6. That said Order was not presented to the attorneys for MAUREEN SCHOUMAN, either for approval as to form and content, nor was it submitted by way of a Motion For Entry.

7. That said Order is not reflective of the Order of this Court, which was merely to deny MAUREEN SCHOUMAN'S Motion.

8. That said Order requires that MAUREEN SCHOUMAN do certain things, which actions were not mandated by this Court.

9. That MAUREEN SCHOUMAN has never been a party to this action, and no hearing has ever been held which could even arguably provide the basis for any jurisdiction in this Court to compel her to accomplish facts which would result in the deprivation of her property rights.

WHEREFORE, Petitioner herein prays that this Honorable Court will set aside the Order previously entered in this matter on March 28, 1996, Nunc Pro Tunc, and will enter an Order reflective of the Court's directives from the bench.

Respectfully submitted,

MUSILLI, BAUMGARDNER,
WAGNER & PARNELL, P.C.

By: /s/ Ralph Musilli
RALPH MUSILLI, P18132

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BASIC ENERGY & AFFILIATED RESOURCES, INC., MID AMERICA RESOURCES CORP., MICHAEL SCHOUMAN, SARAH DELANEY, ROBERT VECCHIONI, CHARLES E. MICHAEL, JR., GUS ZOPPI, JR. and SCOTT SOWLES, Defendants.	CIVIL ACTION FILE NO. 94 CV 74434 Hon. Horace W. Gilmore

ORDER DENYING PETITIONERS MAUREEN SCHOUMAN, DONNA SCHOUMAN AND THE SCHOUMAN FAMILY'S REQUEST TO SET ASIDE THIS COURT'S ORDER OF JANUARY 16, 1996 AND ESTABLISHING OWNERSHIP INTERESTS IN CAPE COD PROPERTY

(Filed Apr. 24, 1996)

At a session of said Court, held in the Federal Building,
City of Detroit, County of Wayne, State of Michigan, on
March 28, 1996.

Present: Honorable Horace W. Gilmore
United States District Court

This matter having come before the Court on Petitioners Maureen Schouman, Donna Schouman and the Schouman Family's Objection to Court's Order of January 16, 1996, relating to title and ownership of land and buildings located at 51 Briar Spring Road, Orleans, Massachusetts [more particularly described as that property in the County of Barnstable, Commonwealth of Massachusetts, Lots 36 and 37 Plan 18347-B (Sheet 4), Certificate of Title No. 116506, Original Case No. 18347] (the "Property"), and the matter having been briefed and argued by Petitioners, the Securities and Exchange Commission and the Conservator, the Court having considered such arguments and the Court being otherwise fully advised in the premises:

IT IS HEREBY ORDERED that:

1. The Petitioners' request for relief is denied.

2. That prior to November 27, 1995, Defendant Michael Schouman and his sister, Maureen Schouman, owned the Property as tenants in common, each owning 50% of the Property.

3. Michael Schouman's 50% interest in the Property was transferred to the Conservator upon his and his wife, Donna Schouman's execution of a quitclaim deed dated November 27, 1995 and again was transferred to Lewis G. Mosburg, Jr., Trustee of Nominee Trust by Michael Schouman's execution of a quitclaim dated January 24, 1996.

4. The Conservator and Maureen Schouman, as co-owners of the Property, shall each market the Property for sale and obtain bona fide bids for such sale. By August 16, 1996, each co-owner shall present the Court

and the other co-owner with its highest bona fide offer for the sale of the Property. Any offers received prior or after August 16, 1996, by either co-owner, must be conveyed to the other co-owner within 7 days of receipt. Maureen Schouman and the Conservator must each disclose any prior relationship they have with the party making the offer at the time of disclosing the offer to the other party. Each co-owner shall have the right to match the highest bidder for the Property provided that if the co-owner shall have the right to match the highest bidder for the Property provided that if the co-owner so chooses, the co-owner must do so, with proof of financing, by September 6, 1996. On September 8, 1996, or as soon thereafter as the Court may schedule, the co-owner shall appear in Court for a hearing on the sale of the Property. At that hearing, the Court will either order a public sale of the Property or a private sale of the Property to the highest bidder presented to the Court. The Court will set a date for confirmation of the private sale or a date for the holding of a public sale. The co-owners will be required to cooperate with each other in marketing the Property, including the retention of a broker.

5. Maureen Schouman is required to provide the Conservator with keys to the Property by April 12, 1996. The Conservator is authorized to enter into leases of the Property pending the sale provided that Maureen Schouman may make an offer to lease the Property for increments of no less than one month for fair market rental, as determined by the Conservator. Any such offer to rent must be made to the Conservator within 21 days of entry of this order and must specify which month(s) she proposes to rent. The Conservator shall have discretion in

determining the best possible rental terms. If the Property is rented to Maureen Schouman, during her period of occupancy she shall fully cooperate in the marketing of the Property including allowing prospective purchasers and real estate agents to have reasonable access to the Property.

7. The Conservator is authorized to arrange for the appraisal of the Property by three independent, qualified appraisers.

8. The co-owners shall each be responsible for payment of one half of the expenses to maintain the Property pending the sale. Maintenance costs shall include but are not necessarily limited to property and casualty insurance, mortgage payments, property taxes, utilities and upkeep. If one of the co-owners fails to pay one half of the maintenance costs the other co-owner may pay those costs provided that any such payments shall accrue interest at the rate of 12% per annum and shall constitute a lien on the Property in favor of the party paying the costs.

9. Maureen Schouman shall cooperate with the Conservator in identifying needed maintenance items and costs and shall not be permitted to contract for or pay maintenance costs without first obtaining the consent of the Conservator. Maureen Schouman shall provide the Conservator with a copy of the current property and casualty insurance policy on the Property within 7 days of entry of this order and shall cooperate with the Conservator in maintaining said policy pending the sale.

Maureen Schouman shall provide the Conservator authorization to obtain loan balance and payment information from the Cape Bank.

10. The promissory note and agreement executed by Michael Schouman in favor of Basic Energy & Affiliated Resources, Inc. on May 24, 1990 and the promissory note and security agreement executed by Michael Schouman in favor of Dr. J. P. Syron do not constitute legal or equitable liens on the Property.

Dated: March 28, 1996

/s/ Horace W. Gilmore
HONORABLE HORACE W. GILMORE
UNITED STATES DISTRICT JUDGE

APR 2 1996

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-vs-

BASIC ENERGY & AFFILIATED RESOURCES, INC., MID AMERICA RESOURCES CORP., MICHAEL SCHOUMAN, SARAH DELANEY, ROBERT VECCHIONI, CHARLES E. MICHAEL, JR., GUS ZOPPI, JR. and SCOTT SOWLES,

Defendants.

Civil Action Case
No.: 94 CV 74434

Hon. Horace W. Gilmore

MUSILLI, BAUMGARDNER, WAGNER
& PARNELL, P.C.
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Attorney for the Conservator, MOSBURG
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(616) 940-1190

OBJECTION TO COURT'S ORDER OF JANUARY 16, 1996

NOW COMES MAUREEN SCHOUMAN and other interested parties, by and through their attorneys, MUSILLI, BAUMGARDNER, WAGNER & PARNELL, P.C., and in objecting to certain provisions of an Order entered by this Court on January 16, 1996, shows unto this Honorable Court as follows:

1. That on or about January 16, 1996, this Court did issue an Order Authorizing Lewis G. Mosburg, Jr., to Establish a Nominee Trust. Certain provisions of that Order called for Defendant MICHAEL SCHOUMAN to execute a Deed to property located in Barnstable County, Massachusetts, transferring the title to that property to the Trust.

2. That your Petitioners herein are interested parties in that they are title holders and parties in interest in the property located in Barnstable County, Massachusetts, which property is affected by said Order, and said individuals are not parties to this action.

3. That said property was purchased by members of the SCHOUMAN family (including Defendant MICHAEL SCHOUMAN, a part to this action), in 1978 to serve as a family investment and a family compound.

4. That at all times, Defendant MICHAEL SCHOUMAN, never owned more than twelve and one-half percent (12½%) to a a [sic] twenty percent (20%) interest, either individually or as a joint tenant in said interest with his wife, DONNA SCHOUMAN.

5. That the interests held by all parties were non divisible interest.

6. That in or about 1988, Defendant MICHAEL SCHOUMAN, as principal of Defendants BASIC ENERGY & AFFILIATED RESOURCES, INC., and/or MID AMERICA RESOURCES CORP., as a result of economic necessity, did borrow the sum of Two Hundred Thousand Dollars ($200,000.00) from the Cape Bank, which monies were secured by the Barnstable County, Massachusetts property, and which monies were transferred directly into the bank account of Defendants BASIC ENERGY & AFFILIATED RESOURCES, INC., and/or MID AMERICA RESOURCES CORPORATION, for use by said entities.

7. That in return, Defendant MICHAEL SCHOUMAN, on behalf of the afore-mentioned corporate entities did execute promissory notes and security agreements securing the sum thus borrowed by Defendant MICHAEL SCHOUMAN'S interest in the Barnstable County, Massachusetts property.

8. That subsequent thereto, the afore-mentioned Defendant MICHAEL SCHOUMAN, on behalf of the corporate entities did borrow an additional Nineteen Thousand Dollars ($19,000.00) from one Dr. J.P. Syron, which monies also went directly to the corporate entities for use in their ventures. Said Nineteen Thousand Dollars ($19,000.00) loan was secured against Defendant MICHAEL SCHOUMAN's interest in the Barnstable County, Massachusetts property.

9. That between the time of the execution of the mortgage, and the Two Hundred Thousand Dollar

($200,000.00) and the Nineteen Thousand Dollars ($19,000.00) secured against the said Barnstable County, Massachusetts property, the corporate entities made monthly payments on said notes. That said payments were made through October, 1994, at which time this action was commenced and all assets of the corporate entity were frozen.

10. That from and after November, 1994, all mortgage payments on the afore-mentioned borrowings have been made by Petitioner MAUREEN SCHOUMAN, an individual who is not a party to this action.

11. That on or about November, 1994, in excess of One Hundred Fifty Thousand Dollars ($150,000.00) still remained on the indebtedness (approximate) due to the bank which had loaned the Two Hundred Thousand Dollars ($200,000.00) and virtually all of the Nineteen Thousand Dollars ($19,000.00) was still owed to Dr. J.P. Syron. In addition, said Petitioner MAUREEN SCHOUMAN, assumed and has paid all taxes, both accumulated and current, which are or have become due on the Barnstable County, Massachusetts property.

12. That any interest that Defendant MICHAEL SCHOUMAN may have or have control of as a result of acting as agent for the corporate entities, is subject to and encumbered by the interests of the non party interest owners of said property, as well as the mortgagees and note holders.

13. That as of the date of the filing of this Objection, any interest that Defendants MICHAEL SCHOUMAN, BASIC ENERGY & AFFILIATED RESOURCES, INC. and/or MID AMERICA RESOURCES CORP., may claim to the

Barnstable County, Massachusetts property is subject to outstanding loans and encumbrances of approximately One Hundred Eighty Thousand Dollars ($180,000.00) which exceeds any interest that Defendant MICHAEL SCHOUMAN would have in said property.

WHEREFORE, your Petitioners respectfully request that this Honorable Court set aside its Order as it affects the Barnstable County, Massachusetts property, or in the alternative Order the transfer by Defendant MICHAEL SCHOUMAN of whatever interest he may have in the twelve and one-half percent (12½%) to twenty percent (20%) share of the property, in exchange for satisfaction on the outstanding notes, as well as any and all portions of that note, satisfied by non parties herein, said amounts to be paid by the present Conservator out of assets alleged to belong to Defendants BASIC ENERGY & AFFILIATED RESOURCES, INC. and/or MID-AMERICA RESOURCES CORP. In the alternative, Petitioners would request that this Court recognize the interest of the non party affected individuals in this matter and Order the Trustee to Release any and all interest it may claim in said property.

Respectfully submitted,

MUSILLI, BAUMGARDNER,
WAGNER & PARNELL, P.C.

By: /s/ Ralph Musilli
RALPH MUSILLI, P18132

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BASIC ENERGY & AFFILIATED RESOURCES, INC., MID AMERICA RESOURCES CORP., MICHAEL SCHOUMAN, SARAH DELANEY, ROBERT VECCHIONI, CHARLES MICHAEL, JR., GUS ZOPPI, JR., and SCOTT SOWLES, Defendants.	CIVIL ACTION FILE NO. 94 CV 74434 Hon. Horace W. Gilmore **ORDER AUTHORIZING LEWIS G. MOSBURG, JR., TO ESTABLISH A NOMINEE TRUST**

At a session of said Court, held in the Federal Building, City of Detroit, County of Wayne, State of Michigan, on JAN 16 1996, 1996.

Present: Honorable Horace W. Gilmore
United States District Court

1. On December 20, 1994, this Court appointed Lewis G. Mosburg, Jr. as conservator for Basic Energy & Affiliated Resources, Inc. and its corporate affiliates (collectively "BEAR") "for the purpose of protecting the interests of investors". [Paragraph 1]

2. On April 3, 1995, this Court appointed Lewis G. Mosburg, Jr. to continue acting as Conservator BEAR "for the purpose of liquidating" BEAR. [Paragraph A.]

3. On November 9, 1995, this Court ordered Michael Schouman to execute a quitclaim deed to BEAR for his 50% interest is property located in East Orleans, Massachusetts (the "Property").

4. The Barnstable County Registry of Deeds Requires that Michael Schouman convey his interest in the Property to Lewis G. Mosburg, Jr. individually as Trustee of a Nominee Trust with Lewis G. Mosburg, Jr. as Conservator of BEAR as the beneficiary.

5. The Barnstable County Registry of Deeds requires the original Transfer Certificate of Title to be presented in order to file a deed.

6. Lewis G. Bosburg, Jr. requests that this Court authorize him to establish a Nominee Trust with him individually as Trustee and him as the Conservator of BEAR as beneficiary.

7. Lewis G. Mosburg, Jr. requests that this Court order Michael Schouman to execute a deed for the Property to Lewis G. Mosburg, Jr. as Trustee of the Nominee Trust in form acceptable for filing at the Barnstable County Registry of Deeds.

8. Lewis G. Mosburg, Jr. requests that this Court order Michael Schouman to present the original Transfer Certificate of Title within 10 days of entry of this order and otherwise fully cooperate in all actions necessary to file the deed.

IT IS SO ORDERED.

Dated: JAN 16 1996

/s/ Horace W. Gilmore
Honorable
Horace W. Gilmore
United States
District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SECURITIES & EXCHANGE COMMISSION, Plaintiff, v. BASIC ENERGY & AFFILIATED RESOURCES, INC., MID AMERICA RESOURCES CORP., MICHAEL SCHOUMAN, SARAH DELANEY, ROBERT VECCHIONI, CHARLES MICHAEL, JR., GUS ZOPPI, JR., and SCOTT SOWLES, Defendants.	CIVIL ACTION File No. 94 CV 74434 JUDGE HORACE GILMORE

ORDER REQUIRING DEFENDANTS SCHOUMAN AND DELANEY TO TURN OVER ASSETS OR BE INCARCERATED UNTIL COMPLIANCE WITH THIS ORDER

(Filed Nov. 9, 1995)

This cause coming on to be heard on Plaintiff Securities and Exchange Commission's motion for an Order to Show Cause Why Defendants Michael Schouman and Sarah Delaney Should Not be Held in Civil Contempt for Failure to Pay Disgorgement (Motion), the parties having had the opportunity to be brief and argue the Motion, and the court being fully advised in the premises,

IT IS HEREBY ORDERED THAT:

1. By November 25, 1995, Defendant Michael Schouman is to execute quitclaim deeds to Basic Energy & Affiliated Resources, Inc. (BEAR) for his 50% interests in the following properties listed in Schouman's Statement of Financial Condition dated July 17, 1995: Canal Street home, Waterford, Michigan; Vacant Land, Ann Arbor, Michigan; and Cape Code home, East Orleans, Massachusetts. Such deeds must be delivered to Lewis Mosburg, Jr., Conservator for BEAR. Additionally, Schouman must obtain a cashier's check for half the current balance of the Comerica Bank account listed as an asset on his Financial Statement. Such check must be delivered to the Conservator by November 20, 1995.

2. By November 20, 1995, Defendant Sarah Delaney must deliver the 1994 Ford Ranger Truck purchased by BEAR to Lewis Mosburg, Jr., in Grand Rapids, Michigan and also arrange and complete the transfer of the title to such truck to BEAR. Additionally, Delaney must obtain a cashier's check(s) for the account(s) reflected in her Statement of Financial Condition as cash and turn all funds in such account(s) over to the Conservator, Lewis Mosburg, Jr., by November 20, 1995.

3. Schouman and Delaney will cooperate with the Commission to establish that they have no other assets from which to satisfy their disgorgement obligation. As part of such cooperation, Schouman and Delaney will be subject to depositions regarding their assets, including, but not limited to, assets that are identified in this Order and in their Statements. This Order does not negate Schouman and Delaney obligations to pay the remaining

disgorgement and prejudgment interest previously ordered by this Court on April 25, 1995. Such obligation shall continue until such amounts are paid or an order is entered by the Court releasing them from payment. Further, this Order does not prohibit the Commission from making a motion requesting the imposition of civil penalties.

4. If Schouman and Delaney fail to timely comply with the above ordered actions, they shall be incarcerated until such compliance.

/s/ Horace Gilmore
JUDGE HORACE GILMORE
U.S. District Court Judge for the Eastern District of Michigan

Dated: November 9, 1995

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BASIC ENERGY & AFFILIATED RESOURCES, INC., MID AMERICA RESOURCES CORP., MICHAEL SCHOUMAN, SARAH DELANEY, ROBERT VECCHIONI, CHARLES MICHAEL, JR., GUS ZOPPI, JR., and SCOTT SOWLES, Defendants.	CIVIL ACTION FILE NO. 94 CV 74434 Judge Gilmore

ORDER OF PRELIMINARY INJUNCTION AGAINST BASIC ENERGY & AFFILIATED RESOURCES, INC., MID AMERICA RESOURCES CORP., MICHAEL SCHOUMAN, SARAH DELANEY, ROBERT VECCHIONI, GUS ZOPPI, JR. and SCOTT SOWLES

Plaintiff Securities and Exchange Commission (Commission) has filed a Complaint for a Temporary Restraining Order, and Preliminary and Permanent Injunctions and Other Equitable Relief (Complaint) in this matter and Defendants Basic Energy & Affiliated Resources, Inc. (BEAR), Mid America Resources Corporation (MARC), Michael Schouman (Schouman), Sarah Delaney (Delaney), Robert Vecchioni (Vecchioni), Gus Zoppi, Jr.

(Zoppi) and Scott Sowles (Sowles) have, in their Consent and Stipulation attached hereto and incorporated herein, acknowledged receipt of the Complaint, admitted the jurisdiction of this Court over them and the subject matter thereof, and without admitting or denying the allegations of the Complaint, except as to jurisdiction, and without trial, argument or adjudication of any facts or law herein, consented to the entry of this Order of Preliminary Injunction (Order). The Commission and Defendants BEAR, MARC, Schouman, Delaney, Vecchioni, Zoppi and Sowles have waived the entry of findings of fact and conclusions of law, as provided by Rule 52 of the Federal rules of Civil Procedure. The Court having jurisdiction over the parties and the subject matter hereof, and being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants BEAR, MARC, Schouman, Delaney, Vecchioni, Zoppi and Sowles, their officers, agents servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, be and are hereby preliminarily restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of securities of any issuer, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

A. employing any device, scheme or artifice to defraud;

B. making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

C. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants BEAR, MARC, Schouman, Delaney, Vecchioni, Zoppi and Sowles, their agents servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, be and are hereby preliminarily restrained and enjoined from, directly or indirectly, in the offer or sale of securities of any issuer, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, employing any device, scheme or artifice to defraud.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants BEAR, MARC, Schouman, Delaney, Vecchioni, Zoppi and Sowles, their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, be and are hereby preliminarily restrained

and enjoined from, directly or indirectly, in the offer or sale of securities of any issuer, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon purchasers or prospective purchasers of such securities, or obtaining money or property by means of any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants BEAR, MARC, Schouman, Delaney, Vecchioni, Zoppi and Sowles, their agents servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, be and are hereby preliminarily restrained and enjoined from, directly or indirectly:

A. making us of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to sell securities through the use or medium of any prospectus or otherwise, unless a registration statement is in effect with the Commission as to such securities;

B. carrying or causing to be carried such securities through the mails or in interstate commerce, by any means or instruments of

transportation, for the purpose of sale or for delivery after sale, unless a registration statement is in effect with the Commission as to such securities; or

C. making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy such securities, through the use or medium of any prospectus or otherwise, unless a registration statement has been filed with the Commission as to such securities, or while a registration statement as to such securities is the subject of a refusal order or stop order or any public proceeding or examination under Section 8 of the Securities Act of 1933 [15 U.S.C. 77h];

provided, however, that nothing above shall apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act [15 U.S.C. 77e].

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants BEAR, MARC, Schouman, Delaney, Vecchioni, Zoppi and Sowles, their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, be and are hereby preliminarily restrained and enjoined until further order of this Court, from:

A. directly or indirectly, transferring, selling, assigning, pledging, dissipating, disbursing, concealing or otherwise disposing of, in any manner, any funds, assets, or other

property belonging to, or in the possession, custody or control of Defendants BEAR, MARC, Schouman, Delaney, Vecchioni, Zoppi and Sowles, wherever located, subject to further order of the Court; and

B. destroying, mutilating, concealing, altering or disposing of, in any manner, any of the books, records, documents, correspondence, brochures, manuals, obligations or other property of or pertaining to Defendants BEAR, MARC, Schouman, Delaney, Vecchioni, Zoppi and Sowles, wherever located.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attached Consent and Stipulation of Defendants BEAR, MARC, Schouman, Delaney, Vecchioni, Zoppi and Sowles be, and hereby is, incorporated herein with the same force and effect as if fully set out herein.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order of Preliminary Injunction.

/s/ Horace W. Gilmore
HONORABLE
JUDGE GILMORE
UNITED STATES DISTRICT
COURT JUDGE EASTERN
DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DATED: NOV 09 1994, 1994.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	Civil Case No. 94-74434
-vs-	)	Detroit, Michigan
BASIC ENERGY & AFFILIATED RESOURCES, INC., MID AMERICA RESOURCES CORP., MICHAEL SCHOUMAN, SARAH DELANEY, ROBERT VECCHIONI, and SCOTT SOWLES,	)	March 7, 1996
Defendants.	)	

TRANSCRIPT OF MOTION

BEFORE THE HONORABLE HORACE W. GILMORE

UNITED STATES DISTRICT JUDGE

(Filed Jan. 24, 1997)

APPEARANCES:

For the Plaintiff:	JANE JARCHO, ESQ.
For the Defendants:	WALTER L. BAUMGARDNER, ESQ. On behalf of Sarah Delaney
	RALPH E. MUSILLI, ESQ. On behalf of Maureen Schouman
For the Conservator:	PHILLIP S. STENGER, ESQ.

Court Reporter: Ronald A. DiBartolomeo, CSR
722 U.S. Courthouse
Detroit, Michigan 48226
(313) 962-1234

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EXHIBITS

Identification	Offered	Received

NONE

[P. 3] Detroit, Michigan
Thursday, March 7, 1996

THE COURT: SEC versus BEAR, objection to January 16, 1996 order, and SEC versus BEAR, motion to exercise redemption rights and sell the Delaney's house.

MS. JARCHO: Jane Jarcho on behalf of the United States.

THE COURT: You made [sic] proceed.

MS. JARCHO: This isn't my motion, but the conservator's motion.

THE COURT: Go ahead.

MR. STENGER: Phil Stenger on behalf of the conservator.

Your Honor, the purpose of this motion is to obtain the Court's authority to do several things. Primarily –

THE COURT: I entered an order, haven't I?

MR. STENGER: I –

THE COURT: I have not or have I?

MR. STENGER: I don't think on this one.

THE COURT: You are right.

MR. STENGER: This is the property – the home of Sarah Delaney in the Basic Energy matter which was [p. 4] foreclosed by First Mortgage Holding Bank in September of 95, and –

THE COURT: I ordered – I am acquainted with this. There are so many BEAR things. On February 18th, I ordered Delaney to quit claim deed all of her right, title, interest, including redemption rights on the home.

MR. STENGER: That's correct. She has done that.

THE COURT: All right. Now go ahead.

MR. STENGER: What we are here to do today is a few things. One is to ask the Court permission to redeem the property because when it was –

THE COURT: Ask permission?

MR. STENGER: Redeem the property out for redemption period that expires March 18th, and there is a buyer for the property who is [sic] courtroom today.

THE COURT: Buyer? What is the price?

MR. STENGER: 188,000.

THE COURT: That's well above the two-thirds average, isn't it?

MR. STENGER: Yes.

THE COURT: Two-thirds is 137 anyways.

MR. STENGER: Yes, and so what we are asking your Honor is permission for to us redeem the property. The redemption price of the property is $57,001.14.

[p. 5] THE COURT: And you got a 188,000 offer?

MR. STENGER: Yes, we do.

There are two additional liens on the property, one is second mortgage of 9,000 –

THE COURT: You get 120,000.

MR. STENGER: Additionally more, there is a tax lien of $21,501.

THE COURT: Federal tax lien?

MR. STENGER: Yes. The equity is just over $100,000. So we believe it is in the best interest of the estate to redeem the property.

THE COURT: What is the objection to it? That's what I can't understand.

MR. STENGER: I am not aware –

THE COURT: Go right ahead. Do you have any objection?

MR. BAUMGARDNER: No, your Honor.

THE COURT: Let's not waste anymore time. Fine.

MR. STENGER: There are a few orders that we are presenting.

THE COURT: Are these orders signing what I just directed?

MR. STENGER: Yes, they are, your Honor.

THE COURT: That is authorizing redemption authorizing short team [sic] lease pending sale?

[p. 6] MR. STENGER: That's correct.

THE COURT: Authorizing a private sale. Do you have an appraiser?

MR. STENGER: Under the statute, we do have to have an appraiser. We had the appraisal done. We just need the Court to essentially –

THE COURT: Nunc pro tunc?

MR. STENGER: Yes.

THE COURT: All right. Next BEAR motion?

MR. STENGER: I guess one final thing on this. Ms. Delaney was required vacate [sic] the premise on March 4th. As far as we know, there has been movers there. We would like to get the keys to the property today.

THE COURT: All right.

MR. STENGER: I don't see Ms. Delaney in the courtroom.

THE COURT: You represent her?

MR. BAUMGARDNER: I do. Walter Baumgardner on behalf of Sarah Delaney.

THE COURT: Any reason she should not turn over the keys?

MR. BAUMGARDNER: We have the keys.

THE COURT: Will you give them to him?

MR. BAUMGARDNER: Yes.

THE COURT: Fine. Thank you.

[p. 7] Next is to confirm the sale of the 1994 Ford Ranger. Anyone that wants to be heard on that? Anyone got anything to say on the confirmation of the Ranger to be sold for –

MR. STENGER: 13,000 –

THE COURT: $13,400. It had a blue book ranking from 13 to 15 to 17, but stored for about four months.

MR. STENGER: That's correct, your Honor.

THE COURT: I will sign the order on that.

The last one is Massachusetts objections to the Court's order mass now what you are doing seek [sic] ago rehearing I may entered this hearing on January 19th.

MR. MUSILLI: Ralph Musilli on behalf of Maureen Schouman and Donna Schouman, and this is kind of an unusual proceeding, and my motion was an unusual motion when I filed it. It is more, I guess, like a motion to intervene than anything else, but pleading before this Court to get the matter before the Court.

THE COURT: As I understand it, I signed the order on January 16th ordering Michael Schouman to deliver the transfer of title on the property located in Cape Code to the conservator by January 26th so that the conservator could establish a nominee trust and record the conservator's interest in the Cape Code property, according to Massachusetts law.

What's wrong with that order?

[p. 8] MR. MUSILLI: The order fails to take into consideration other non-party interests in the property, and it's going to cloud the title where the title should not be clouded, and if the Court would indulge me for five minutes, I can give the Court a little bit of history of how this property comes to be involved in this particular action.

Now in my pleadings, I used percentages and numbers that may not be accurate, but it is the best that I had when I filed the pleading, and when I did, I believed them to be true. There is going to be little shifts in those numbers, but the concept is going to be the same, and the point is, the principal of law is going to be the same.

Basically, what we are dealing with is a due process argument, whereby what we are saying on behalf of Donna Schouman, and more particularly Maureen Schouman, is not being parties to this action. Their interest in the property is being jeopardized and compromised without their having an opportunity to defend that interest, and accordingly their due process was denied.

With that preamble, this property, the Massachusetts property, was originally purchased by the Schouman family in 1978. At that time Margaret Schouman, who was the mother – and she died last year – James, who is the father. Maureen, who is a daughter, and Michael who is a son, each entered into a partnership agreement, whereby they agreed [p. 9] to buy this property.

According to the terms of that partnership agreement, which was entered into agreement in October of 1978, predate BEAR Energy, mother Margaret Schouman invested approximately $63,000, James invested $8,300,

Maureen invested $9,000 and Michael invested $8,300 for the down payment, and it was mortgaged with the Cape Cod Bank, and to this date that mortgage – there is a $71,000 balance still due on that first mortgage.

In late 1988, early 89, when the oil market went down, BEAR Energy was in serious need of money. Michael Schouman came to his family and said, I need an infusion of cash here. I want to borrow some money. They went to the Cape State Bank and attempted to obtain a $200,000 loan. The Cape Bank wanted security for that. So the siblings got together, and the mother got together, and they agreed to transfer all of the interest in the house to two of the siblings, Michael and Maureen for the purpose of securing a $200,000 loan. It was understood and agreed between the parties that upon the satisfaction of the $200,000, then the property would be put back into the names of the people that was originally in.

That $200,000 loan was extended by the Cape State Bank, and the money was transferred directly from that bank lending institution. It was wired – transferred directly into the bank account of BEAR Energy, and according to the [p. 10] agreement that BEAR Energy entered into, they were suppose to make the payments on that. Then this matter hit. BEAR Energy's assets were seized. BEAR Energy properties were seized. There was still approximately $170,000 due outstanding on that $200,000 note.

THE COURT: They are arguing, first of all, that Donna Schouman's interests were extinguished. She executed a quit claim deed on November 27, 1995, and Maureen Schouman failed to establish any property

transferred to her title as title information recorded in Barnstable County.

According to what I have here, is that Maureen and Michael are deeded the property in 88 and no other documents have ever been recorded since that time.

MR. MUSILLI: That's an allegation of the government, but that's not true. If the Court reads that – I am looking for the letter that was forwarded by the attorney.

THE COURT: The fact is the Schoumans bought the property in 1978?

MR. MUSILLI: Right.

THE COURT: The deed is in his name and his wife's name.

MR. MUSILLI: No. In 1978, the property was in the name of James Schouman pursuant to a partnership agreement that was entered into by the mother and the three siblings.

THE COURT: Didn't they convey – wasn't the [p. 11] property conveyed to a quit claim deed to Michael and Maureen and –

MR. MUSILLI: To Michael and Maureen in 1988, 89 for the specific purpose of securing this loan that went to BEAR Energy. What SEC is attempting to do is extinguish everybody's interest, to sell this property free of [sic] clear of the notes that are still secured against them, leaving Maureen Schouman and the other Schoumans holding heavy for the 170,000 due on the 200,000 note.

THE COURT: Any interest of Donna's is extinguished because of the quit claim deed.

MR. MUSILLI: Donna – Michael's wife, her interest –

THE COURT: She gave a quit claim?

MR. MUSILLI: Yes, and gave it because this Court, pursuant to a request of the SEC, said if you don't, I am sending your husband to jail. So we got a certain amount of duress.

THE COURT: I don't consider contempt duress.

MR. MUSILLI: It was not contempt, but he was forced to have her do that, but be that as it may, her interest was a marital interest. It was joint with Michael. Maureen is Maureen's interest, and she is not a party to this.

Now in addition to those interest, you also have the bank that has 160 or $170,000 outstanding that Maureen [p. 12] Schouman has been making the payments on, and you have the original mortgage that still has an outstanding balance of $71,000 on it.

Now what I am suggesting to this Court is that the only thing that the SEC can exceed to is to any interest that BEAR Energy may have in that property, or any interest that Michael Schouman may have acquired or possessed as a result of what he was doing with BEAR, where, in fact, that property is only a vehicle for extending money to BEAR. If anything, the SEC, having accrued all the interest of BEAR, has a liability outstanding of $170,000, and there is no interest in that property until that debt has been extinguished.

Now it is my understanding that a foreclosure action is in the process on that $170,000. For the SEC to come in and say as they state in their revised proposed order in Paragraph 10, they are seeking this court to enter an order that the promissory note and security agreement executed by Michael Schouman in favor of BEAR Resources or BEAR, Incorporated, and the promissory notes and security agreement be constituted –

THE COURT: Excuse me. I want to get the order.

Go ahead.

MR. MUSILLI: They want this Court to extinguish those lienes that represents recognition on the family property for the sole benefit of BEAR, Incorporated. That's, first of [p. 13] all, inequitable, and second of all, there's no legal precedence for that, for stripping people of interest in property without according them due process, because we want to do it, and Michael Schouman within time may have had an interest in the property.

So what we are requesting of this Court, is that the order of January 16th be revisited to recognize that the only interest that the SEC or the trustee has in that property is for Michael Schouman's 25 percent interest as burdened by the remainder of the loan, the $200,000 loan, wherein the money went directly to BEAR Energy and used solely for the purpose of BEAR Energy. Anybody else's interest or any argument relative to Maureen Schouman, relative to James Schouman, relative to Donna Schouman, and unless those parties are named parties to this action and brought in and given an opportunity to

defend their interest in the property, is a deprivation of their due process right.

THE COURT: Let's hear from the SEC.

MS. JARCHO: Jane Jarcho, your Honor.

Mr. Musilli missed a key point in this case, which is the issue, which is that this real property only once has been recorded. No doubt right now the current ownership interest is in Maureen Schouman's name with Michael Schouman as co-owner. That's a 50 percent interest. Michael owns 50 percent as reflected in the public documents that have been [p. 14] recorded.

THE COURT: What about his claim of denial of due process?

MS. JARCHO: Your Honor, there is no issue of due process. It is only taking Michael's 50 percent interest. We are not trying to take Maureen's interest.

THE COURT: Only recorded interest is Michael and –

MS. JARCHO: Maureen as co-owner. Whatever story they spun, how we got to that point today –

THE COURT: The only recorded interest is the two of them?

MS. JARCHO: Yes.

THE COURT: All my order was to order 50 percent –

MS. JARCHO: Order Michael's 50 percent. Maureen has 50 percent. We are not taking her interest

away. Going on the land records, the land records is 50 percent and 50 percent. We are taking Michael's interest because he failed to pay his disgorgement.

MR. MUSILLI: May I respond?

THE COURT: Briefly. You agree that the only holders are those two?

MR. MUSILLI: Subject to that, that change was made at the time –

[p. 15] THE COURT: Answer my question. The record title holder of the property is Michael and Maureen as a tenant in common?

MR. MUSILLI: Right.

THE COURT: All they are asking one-half of that.

MR. MUSILLI: They are asking for one-half free and clear of any liens. What I am asking is that the January 16th order has to – if it is going to dictate due process without jeopardizing non-party rights, it has to be reflective of the fact that one-half interest is burdened with the 200,000 loan that went to BEAR Energy, and there is nothing at all in your order of January 16th that is reflective of that at all.

THE COURT: What is your response?

MS. JARCHO: There is nothing recorded of a $200,000 loan to BEAR Energy.

THE COURT: The only thing of record whatever the register of deed in Massachusetts – I don't know what they call it –

MS. JARCHO: A mortgage and –

THE COURT: And deed to the two of them as tenant in common. Is that the only thing of record?

MS. JARCHO: That's right, the mortgage of record, and I believe the second mortgage is still of record, and I want to make it perfectly clear that we understand that [p. 16] we have half an obligation to that mortgage. We are not asking for Maureen to pay the whole mortgage. Only 50 percent, and your Honor, that mortgage was taken out by Maureen and Michael as co-owners. On the mortgage document, they list – ask, who owns the property, and they said, co-tenants. What are you doing with the money? One, they are paying off the first mortgage, which they didn't, but more importantly, they together – both of them were going to invest in oil and gas.

THE COURT: You say what you want, but the point is the title. I have got to look at what's on record, and what's on record is a deed to the two of them, tenant in common.

MR. MUSILLI: But this was a $200,000 mortgage, and there is no doubt about this, and counsel knows because she has the records under shield that will reflect this entire –

THE COURT: I have to look at –

MR. MUSILLI: I am not disputing that, but what I am saying, the entire $200,000 went to BEAR Energy. For her to stand here now and say BEAR Energy or the trustee that seized all the BEAR Energy assets is

only responsible for half of the mortgage, that's inappropriate.

THE COURT: Your response.

MS. JARCHO: I am not quite sure what he is trying to give impression. There's a $200,000 lien against the property. There is nothing on record but that $200,000 [p. 17] mortgage.

MR. MUSILLI: That's what I am saying.

MS. JARCHO: Second thing that he said, is that the mortgage was not to BEAR Energy. The mortgage was to Michael and Maureen Schouman. There is nothing on record. They both together decided to put that money into BEAR Energy.

Now Maureen Schouman is not unconnected. She is an officer and shareholder. She has been connected the whole time. Even though she could have done what she wanted with that money, she put it into BEAR. There is nothing on the record that has anything do with this money.

MR. MUSILLI: So counsel agrees with me that the loan the [sic] went directly to BEAR Energy? No question about that. We are prepared to offer testimony, and we filed pleadings with this Court that the sole purpose of that loan – the sole purpose of transferring the property title of it, that property – the way it was transferred, Michael Schouman had 50 percent and Maureen Schouman's was 50 percent for that loan to be accomplished. That is the only reason that Maureen Schouman went on that loan. They were not to extend the $200,000

loan, to give the money to BEAR Energy without her signature on it.

For the SEC come in and say, we got the $200,000, but we shouldn't have to be burdened with paying it back. Maureen should have to pay half of it back. She didn't get the benefit of it. That money was transferred from the [p. 18] lending institution. It was wired transferred into the bank account of BEAR, and it never stopped. It was never a pause that Maureen ever had.

All we are asking – by the way, the – there is on record already the details of that loan that does constitute a lien against this property. That is recorded in Massachusetts, and it does reflect that interest. The property is so burdened.

What we are asking this Court to do is amend the order to reflect that SEC – if the – if the Court granted them the interest of Michael Schouman in that report, that interest should be impressed with the money that's now – or the debts that's now overshadowing that property, the proceeds which went exclusively to the estate.

THE COURT: Your response?

MR. STENGER: If I might, as listening to Ms. Jarcho and counsel for the Schoumans, I am getting confused, and I know more about this than your Honor does, and I would like to point out a few facts that might be helpful to your Honor.

To begin with the property was purchased by James Schouman in 1978. Mr. Musilli was referring to family trust and family joint venture. I have never seen that agreement. It is not recorded. It is not of record. What is

of record is that James Schouman purchased the property in [p. 19] 1978, and there is a deed to that.

Next –

THE COURT: And in 1988 he and his wife deeded the property to Michael and his sister Maureen.

MR. STENGER: That's correct.

Now in 1988, the deed was signed by James Schouman and his wife Kathleen. This, although he has got property on his own, he deeded it with his wife too, and being a Michigan attorney, I can understand why he did that. It was not necessary for Kathleen to do it, but she did it anyways. That deed – on the face of the deed says that consideration for that deed was nominal consideration, probably a dollar, and they did it for whatever reason, but at that time Michael Schouman, who was a recipient, and Maureen, didn't pay anything for it. At least that's what they are telling the recorder of deeds. So that was in 1988 in December.

I believe shortly thereafter, about two months later, Michael and Maureen took out a loan from the Cape Bank of Massachusetts in the amount of $200,000.

Now what we know about that note, that loan transaction, is a few things, and I will pick it up from the loan application, which Mike Schouman and Maureen Schouman –

THE COURT: I understand where you are coming from. You want me to go ahead and – well, refuse what basically is a motion for rehearing of the order of the January [p. 20] 16th order.

MR. STENGER: We request that you refuse that request, and I guess the Court should understand too – I am sure you do – the $200,000, which is secured by a mortgage, and then this note that Michael signed 15 months after the Cape Bank mortgage was signed for another 200,000. That note that Mr. Musilli –

MR. MUSILLI: Counsel is misstating the facts. There is only one $200,000.

THE COURT: I heard from you. Wind this up, please.

MR. STENGER: That one it is not a mortgage. It is called a security agreement. It is not recorded in Massachusetts. It is not in recordable form. So at this time there is only one mortgage for $200,000.

THE COURT: All right. I heard enough on this. I looked at this. I see no reason whatever to modify or change or set aside the order of January 16th. I think the defendant must comply with that order by delivering the transfer certificate of title on the Cape Cod property to the Conservator immediately, or in the alternative, the defendant my [sic] tender a cashier's check in the amount of $300,000 to fulfill part of his disgorgement obligation.

I direct that it be done within the next – on or about March 15th. If not, there will be an order of show [p. 21] cause.

MR. MUSILLI: That's been done, your Honor.

THE COURT: All right.

MR. MUSILLI: Michael and Maureen transferred that.

THE COURT: All right.

MR. STENGER: We have not received the original.

THE COURT: I am standing by my original order. I want it enforced and comply with by March 15th. It was entered on January 16th, and that's it.

MR. STENGER: The only thing that I would like to add, if the original transfer of title is lost, I will provide Elmer Heist's application for a new transfer certificate.

THE COURT: Look that up.

MR. STENGER: Either application.

THE COURT: Work it out.

(Proceedings adjourned.)

[p. 22] CERTIFICATE OF COURT REPORTER

I certify that the foregoing is a correct transcript of recorded proceedings in the above-entitled matter.

/s/ Ronald A. DiBartolomeo — June 11, 1996
Ronald A. DiBartolomeo, CSR — Date
Official Court Reporter
(313) 962-1234

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-vs-

BASIC ENERGY & AFFILIATED RESOURCES, INC., MID AMERICA RESOURCES, CORP., MICHAEL SCHOUMAN, SARAH DELANEY, ROBERT VECCHIONI, CHARLES MICHAEL, JR., GUS ZOPPI, JR., and SCOTT SOWLES,

Defendants.

Civil Action No.: 94-74434

NOTICE OF APPEAL

NOTE IS HEREBY GIVEN that MAUREEN SCHOUMAN, Petitioner, hereby appeals to the United States Court of Appeals for the 6th Circuit from the Order Denying Petitioner's Motion to Reform Order entered in this action on the 22nd day of April, 1996.

Respectfully submitted,

MUSILLI, BAUMGARDNER, WAGNER & PARNELL, P.C.

By: /s/ Ralph Musilli
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Dated: May 8, 1996

CONSTITUTIONAL PROVISION INVOLVED IN THE CASE

The Constitution of the United States of America, Amendment V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.